

## Calendar No. 429

109TH CONGRESS  
2D SESSION**S. 2769**

To authorize appropriations for fiscal year 2007 for defense activities of the Department of Energy, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 9, 2006

Mr. WARNER, from the Committee on Armed Services, reported the following original bill; which was read twice and placed on the calendar

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**A BILL**

To authorize appropriations for fiscal year 2007 for defense activities of the Department of Energy, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Department of Energy  
5       National Security Act for Fiscal Year 2007”.

6       **SEC. 2. TABLE OF CONTENTS.**

7       The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. Congressional defense committees.

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY  
PROGRAMS

Subtitle A—National Security Programs

Sec. 3101. National Nuclear Security Administration.

Sec. 3102. Defense environmental cleanup.

Sec. 3103. Other defense activities.

Sec. 3104. Defense nuclear waste disposal.

Subtitle B—Other Matters

Sec. 3111. Notice and wait requirement applicable to certain third party financing arrangements.

Sec. 3112. Utilization of international contributions to the Global Threat Reduction Initiative.

Sec. 3113. Utilization of international contributions to the Second Line of Defense Core Program.

Sec. 3114. Extension of Facilities and Infrastructure Recapitalization Program.

Sec. 3115. Two-year extension of authority for appointment of certain scientific, engineering, and technical personnel.

Sec. 3116. Extension of deadline for transfer of lands to Los Alamos County, New Mexico, and of lands in trust for the Pueblo of San Ildefonso.

Sec. 3117. Limitations on availability of funds for Waste Treatment and Immobilization Plant.

Sec. 3118. Limitation on availability of funds for implementation of the Russian Surplus Fissile Materials Disposition Program.

Sec. 3119. Limitation on availability of funds for construction of MOX Fuel Fabrication Facility.

Sec. 3120. Technical correction related to authorization of appropriations for fiscal year 2006.

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sec. 3201. Authorization.

**1 SEC. 3. CONGRESSIONAL DEFENSE COMMITTEES DEFINED.**

2 For purposes of this Act, the term “congressional de-  
3 fense committees” has the meaning given that term in sec-  
4 tion 101(a)(16) of title 10, United States Code.

1 **TITLE XXXI—DEPARTMENT OF**  
2 **ENERGY NATIONAL SECURITY**  
3 **PROGRAMS**

4 **Subtitle A—National Security**  
5 **Programs**

6 **SEC. 3101. NATIONAL NUCLEAR SECURITY ADMINISTRA-**  
7 **TION.**

8 (a) AUTHORIZATION OF APPROPRIATIONS.—Funds  
9 are hereby authorized to be appropriated to the Depart-  
10 ment of Energy for fiscal year 2007 for the activities of  
11 the National Nuclear Security Administration in carrying  
12 out programs necessary for national security in the  
13 amount of \$9,333,311,000, to be allocated as follows:

14 (1) For weapons activities, \$6,455,389,000.

15 (2) For defense nuclear nonproliferation activi-  
16 ties, \$1,726,213,000.

17 (3) For naval reactors, \$795,133,000.

18 (4) For the Office of the Administrator for Nu-  
19 clear Security, \$356,576,000.

20 (b) AUTHORIZATION OF NEW PLANT PROJECTS.—  
21 From funds referred to in subsection (a) that are available  
22 for carrying out plant projects, the Secretary of Energy  
23 may carry out new plant projects for the National Nuclear  
24 Security Administration as follows:

(1) For readiness in technical base and facilities, the following new plant projects:

Project 07–D–140, Readiness in Technical Base and Facilities Program, project engineering and design, various locations, \$4,977,000.

Project 07–D–220, Radioactive liquid waste treatment facility upgrade project, Los Alamos National Laboratory, Los Alamos, New Mexico, \$14,828,000.

(2) For facilities and infrastructure recapitalization, the following new plant project:

Project 07–D–253, Technical Area 1 heating systems modernization, Sandia National Laboratories, Albuquerque, New Mexico, \$14,500,000.

(3) For defense nuclear nonproliferation, the following new plant project:

Project 07–SC–05, Physical Sciences Facility, Pacific Northwest National Laboratory, Richland, Washington, \$4,220,000.

(4) For naval reactors, the following new plant project:

Project 07–D–190, Materials Research Technology Complex, project engineering and

1 design, Bettis Atomic Power Laboratory, West  
2 Mifflin, Pennsylvania, \$1,485,000.

3 **SEC. 3102. DEFENSE ENVIRONMENTAL CLEANUP.**

4 Funds are hereby authorized to be appropriated to  
5 the Department of Energy for fiscal year 2007 for defense  
6 environmental cleanup activities in carrying out programs  
7 necessary for national security in the amount of  
8 \$5,430,312,000.

9 **SEC. 3103. OTHER DEFENSE ACTIVITIES.**

10 Funds are hereby authorized to be appropriated to  
11 the Department of Energy for fiscal year 2007 for other  
12 defense activities in carrying out programs necessary for  
13 national security in the amount of \$624,530,000.

14 **SEC. 3104. DEFENSE NUCLEAR WASTE DISPOSAL.**

15 Funds are hereby authorized to be appropriated to  
16 the Department of Energy for fiscal year 2007 for defense  
17 nuclear waste disposal for payment to the Nuclear Waste  
18 Fund established in section 302(c) of the Nuclear Waste  
19 Policy Act of 1982 (42 U.S.C. 10222(c)) in the amount  
20 of \$333,080,000.

## **Subtitle B—Other Matters**

### **SEC. 3111. NOTICE AND WAIT REQUIREMENT APPLICABLE TO CERTAIN THIRD PARTY FINANCING AR- RANGEMENTS.**

Subtitle A of title XLVIII of the Atomic Energy De-  
fense Act (50 U.S.C. 2781 et seq.) is amended by adding  
at the end the following new section:

### **“SEC. 4804. NOTICE AND WAIT REQUIREMENT APPLICABLE TO CERTAIN THIRD PARTY FINANCING AR- RANGEMENTS.**

“(a) NOTICE AND WAIT REQUIREMENT.—The Sec-  
retary of Energy may not enter into an arrangement de-  
scribed in subsection (b) until 30 days after the date on  
which the Secretary notifies the congressional defense  
committees in writing of the proposed arrangement.

“(b) COVERED ARRANGEMENTS.—

“(1) IN GENERAL.—Except as provided in para-  
graph (2), an arrangement referred to in subsection  
(a) is any alternative financing arrangement, third  
party financing arrangement, public-private partner-  
ship, privatization arrangement, private capital ar-  
rangement, or other financing arrangement that—

“(A) is entered into in connection with a  
project conducted using funds authorized to be  
appropriated to the Department of Energy to

1 carry out programs necessary for national secu-  
2 rity; and

3 “(B) involves a contractor or Federal  
4 agency obtaining and charging to the Depart-  
5 ment of Energy as an allowable cost under a  
6 contract the use of office space, facilities, or  
7 other real property assets with a value of at  
8 least \$5,000,000.

9 “(2) EXCEPTION.—An arrangement referred to  
10 in subsection (a) does not include an arrangement  
11 that—

12 “(A) involves the Department of Energy or  
13 a contractor acquiring or entering into a capital  
14 lease for office space, facilities, or other real  
15 property assets; or

16 “(B) is entered into in connection with a  
17 capital improvement project undertaken as part  
18 of an energy savings performance contract  
19 under section 801 of the National Energy Con-  
20 servation Policy Act (42 U.S.C. 8287).”.

1 **SEC. 3112. UTILIZATION OF INTERNATIONAL CONTRIBU-**  
 2 **TIONS TO THE GLOBAL THREAT REDUCTION**  
 3 **INITIATIVE.**

4 Section 3132 of the Ronald W. Reagan National De-  
 5 fense Authorization Act for Fiscal Year 2005 (Public Law  
 6 108–375; 50 U.S.C. 2569) is amended—

7 (1) by redesignating subsection (f) as sub-  
 8 section (g); and

9 (2) by inserting after subsection (e) the fol-  
 10 lowing new subsection:

11 “(f) INTERNATIONAL PARTICIPATION IN PRO-  
 12 GRAM.—(1) In order to achieve international participation  
 13 in the program under subsection (b), the Secretary of En-  
 14 ergy may, with the concurrence of the Secretary of State,  
 15 enter into one or more agreements with any person, for-  
 16 eign government, or other international organization that  
 17 the Secretary of Energy considers appropriate for the con-  
 18 tribution of funds by such person, government, or organi-  
 19 zation for purposes of the programs described in para-  
 20 graph (2)(B).

21 “(2)(A) Notwithstanding section 3302 of title 31,  
 22 United States Code, and subject to paragraphs (3) and  
 23 (4), the Secretary of Energy may retain and utilize for  
 24 purposes of the programs described in subparagraph (B)  
 25 any amounts contributed by a person, government, or or-  
 26 ganization under an agreement under paragraph (1) with-



1 out further appropriation and without fiscal year limita-  
2 tion.

3 “(B) The programs described in this subparagraph  
4 are the following programs within the Global Threat Re-  
5 duction Initiative:

6 “(i) The International Radiological Threat Re-  
7 duction program.

8 “(ii) The Emerging Threats and Gap Materials  
9 program.

10 “(iii) The Reduced Enrichment for Research  
11 and Test Reactors program.

12 “(iv) The Russian Research Reactor Fuel Re-  
13 turn program.

14 “(v) The Global Research Reactor Security pro-  
15 gram.

16 “(vi) The Kazakhstan Spent Fuel program.

17 “(3) The Secretary of Energy may not utilize under  
18 paragraph (2) any amount contributed under an agree-  
19 ment under paragraph (1) until 30 days after the date  
20 on which the Secretary notifies the congressional defense  
21 committees of the intent to utilize such amount, including  
22 the source of such amount and the proposed purpose for  
23 which such amount will be utilized.

24 “(4) If any amount contributed under paragraph (1)  
25 has not been utilized within 5 years of such contribution,

1 the Secretary of Energy shall return such amount to the  
 2 person, government, or organization that contributed it.

3 “(5) Not later than 30 days after the receipt of any  
 4 amount contributed under paragraph (1), the Secretary  
 5 of Energy shall submit to the congressional defense com-  
 6 mittees a notice of the receipt of such amount.

7 “(6) Not later than October 31 of each year, the Sec-  
 8 retary of Energy shall submit to the congressional defense  
 9 committees a report on the receipt and utilization of  
 10 amounts under this subsection during the preceding fiscal  
 11 year. Each report for a fiscal year shall set forth—

12 “(A) a statement of any amounts received  
 13 under this subsection, including the source of each  
 14 such amount; and

15 “(B) a statement of any amounts utilized under  
 16 this subsection, including the purposes for which  
 17 such amounts were utilized.

18 “(7) The authority of the Secretary of Energy to ac-  
 19 cept and utilize amounts under this subsection shall expire  
 20 on December 31, 2013.”.

21 **SEC. 3113. UTILIZATION OF INTERNATIONAL CONTRIBU-**  
 22 **TIONS TO THE SECOND LINE OF DEFENSE**  
 23 **CORE PROGRAM.**

24 (a) INTERNATIONAL CONTRIBUTIONS AUTHOR-  
 25 IZED.—In order to achieve international participation in

1 the Second Line of Defense Core Program administered  
2 by the National Nuclear Security Administration, the Sec-  
3 retary of Energy may, with the concurrence of the Sec-  
4 retary of State, enter into one or more agreements with  
5 any person, foreign government, or other international or-  
6 ganization that the Secretary of Energy considers appro-  
7 priate for the contribution of funds by such person, gov-  
8 ernment, or organization for purposes of the program.

9 (b) UTILIZATION OF CONTRIBUTIONS.—Notwith-  
10 standing section 3302 of title 31, United States Code, and  
11 subject to subsections (c) and (d), the Secretary of Energy  
12 may retain and utilize for purposes of the program any  
13 amounts contributed by a person, government, or organi-  
14 zation under an agreement under subsection (a) without  
15 further appropriation and without fiscal year limitation.

16 (c) NOTICE AND WAIT REQUIREMENT.—The Sec-  
17 retary of Energy may not utilize under subsection (b) any  
18 amount contributed under an agreement under subsection  
19 (a) until 30 days after the date on which the Secretary  
20 notifies the congressional defense committees of the intent  
21 to utilize such amount, including the source of such  
22 amount and the proposed purpose for which such amount  
23 will be utilized.

24 (d) RETURN OF UNUTILIZED AMOUNTS.—If any  
25 amount contributed under subsection (a) has not been uti-

1 lized within 5 years of such contribution, the Secretary  
2 of Energy shall return such amount to the person, govern-  
3 ment, or organization that contributed it.

4 (e) NOTIFICATION REQUIREMENT.—Not later than  
5 30 days after the receipt of any amount contributed under  
6 subsection (a), the Secretary of Energy shall submit to  
7 the congressional defense committees a notice of the re-  
8 ceipt of such amount.

9 (f) ANNUAL REPORT.—Not later than October 31 of  
10 each year, the Secretary of Energy shall submit to the con-  
11 gressional defense committees a report on the receipt and  
12 utilization of amounts under this subsection during the  
13 preceding fiscal year. Each report for a fiscal year shall  
14 set forth—

15 (1) a statement of any amounts received under  
16 this section, including the source of each such  
17 amount; and

18 (2) a statement of any amounts utilized under  
19 this section, including the purposes for which such  
20 amounts were utilized.

21 (g) TERMINATION.—The authority of the Secretary  
22 of Energy to accept and utilize amounts under this sub-  
23 section shall expire on December 31, 2013.

1 **SEC. 3114. EXTENSION OF FACILITIES AND INFRASTRUC-**  
 2 **TURE RECAPITALIZATION PROGRAM.**

3 Section 3114 of the National Defense Authorization  
 4 Act for Fiscal Year 2004 (Public Law 108–136; 50 U.S.C.  
 5 2453 note) is amended by striking “2011” both places it  
 6 appears and inserting “2013”.

7 **SEC. 3115. TWO-YEAR EXTENSION OF AUTHORITY FOR AP-**  
 8 **POINTMENT OF CERTAIN SCIENTIFIC, ENGI-**  
 9 **NEERING, AND TECHNICAL PERSONNEL.**

10 Section 4601(c)(1) of the Atomic Energy Defense Act  
 11 (50 U.S.C. 2701(c)(1)) is amended by striking “Sep-  
 12 tember 30, 2006” and inserting “September 30, 2008”.

13 **SEC. 3116. EXTENSION OF DEADLINE FOR TRANSFER OF**  
 14 **LANDS TO LOS ALAMOS COUNTY, NEW MEX-**  
 15 **ICO, AND OF LANDS IN TRUST FOR THE PUEB-**  
 16 **LO OF SAN ILDEFONSO.**

17 Section 632 of the Departments of Commerce, Jus-  
 18 tice, and State, the Judiciary, and Related Agencies Ap-  
 19 propriations Act, 1998 (Public Law 105–119; 111 Stat.  
 20 2523; 42 U.S.C. 2391 note) is amended—

21 (1) in subsection (d)(2), by striking “10 years  
 22 after the date of enactment of this Act” and insert-  
 23 ing “November 26, 2012”; and

24 (2) in subsection (g)(3)(B), by striking “the  
 25 end of the 10-year period beginning on the date of

1 enactment of this Act” and inserting “November 26,  
2 2012”.

3 **SEC. 3117. LIMITATIONS ON AVAILABILITY OF FUNDS FOR**  
4 **WASTE TREATMENT AND IMMOBILIZATION**  
5 **PLANT.**

6 Of the amount authorized to be appropriated under  
7 section 3102 for defense environmental cleanup activities  
8 and available for the Waste Treatment and Immobilization  
9 Plant—

10 (1) not more than 30 percent of such amount  
11 may be obligated or expended until the date on  
12 which the Secretary of Energy certifies to the con-  
13 gressional defense committees that the Defense Con-  
14 tract Management Agency has certified the earned  
15 value management system used to track and report  
16 costs of the Waste Treatment and Immobilization  
17 Plant; and

18 (2) not more than 60 percent of such amount  
19 may be obligated or expended until the date on  
20 which the Secretary of Energy certifies to the con-  
21 gressional defense committees that the final seismic  
22 and ground motion criteria have been approved by  
23 the Secretary and that the contracting officer of the  
24 Waste Treatment and Immobilization Plant Project  
25 has formally directed that the final criteria be used

1 for the final design of the Pretreatment Facility and  
2 the High-Level Waste Facility of the Waste Treat-  
3 ment and Immobilization Plant.

4 **SEC. 3118. LIMITATION ON AVAILABILITY OF FUNDS FOR**  
5 **IMPLEMENTATION OF THE RUSSIAN SUR-**  
6 **PLUS FISSILE MATERIALS DISPOSITION PRO-**  
7 **GRAM.**

8 (a) LIMITATION.—(1) Except as provided in sub-  
9 section (b), none of the amount authorized to be appro-  
10 priated under section 3101(a)(2) for defense nuclear non-  
11 proliferation activities may be obligated for the implemen-  
12 tation of the Russian Surplus Fissile Materials Disposition  
13 Program (in this section referred to as the “Program”)   
14 until 30 days after the date on which the Secretary of  
15 Energy provides to the congressional defense committees  
16 written recommendations regarding whether and in what  
17 manner the Program should proceed.

18 (2) The recommendations submitted under para-  
19 graph (1) shall include—

20 (A) a description of the disposition method the  
21 Government of Russia has agreed to use;

22 (B) a description of the assistance the United  
23 States Government plans to provide under the Pro-  
24 gram;

1 (C) an estimate of the total cost and schedule  
2 of such assistance;

3 (D) an explanation of how parallelism is to be  
4 defined for purposes of the Program and whether  
5 such parallelism can be achieved if the United States  
6 mixed-oxide (MOX) plutonium disposition program  
7 continues on the current planned schedule without  
8 further delays.

9 (b) EXCEPTION.—The limitation under subsection  
10 (a) does not apply to the obligation of funds to continue  
11 research and development associated with the Gas Tur-  
12 bine-Modular Helium Reactor (GT-MHR).

13 **SEC. 3119. LIMITATION ON AVAILABILITY OF FUNDS FOR**  
14 **CONSTRUCTION OF MOX FUEL FABRICATION**  
15 **FACILITY.**

16 None of the amount authorized to be appropriated  
17 under section 3101(a)(2) for defense nuclear nonprolifera-  
18 tion activities may be obligated for construction project  
19 99-D-143, the Mixed-Oxide (MOX) Fuel Fabrication Fa-  
20 cility, until 30 days after the date on which the Secretary  
21 of Energy provides to the congressional defense commit-  
22 tees—

23 (1) an independent cost estimate for the United  
24 States Surplus Fissile Materials Disposition Pro-  
25 gram and facilities; and



1           (2) a written certification that the Department  
 2           of Energy intends to use the MOX Fuel Fabrication  
 3           Facility for United States plutonium disposition re-  
 4           gardless of the future direction of the Russian Sur-  
 5           plus Fissile Materials Disposition Program.

6 **SEC. 3120. TECHNICAL CORRECTION RELATED TO AUTHOR-**  
 7 **IZATION OF APPROPRIATIONS FOR FISCAL**  
 8 **YEAR 2006.**

9           Effective as of January 6, 2006, and as if included  
 10          therein as enacted, section 3101(a) of the National De-  
 11          fense Authorization Act for Fiscal Year 2006 (Public Law  
 12          109–163; 119 Stat. 3537) is amended by striking  
 13          “\$9,196,456” and inserting “\$9,196,456,000”.

14 **TITLE       XXXII—DEFENSE       NU-**  
 15 **CLEAR   FACILITIES   SAFETY**  
 16 **BOARD**

17 **SEC. 3201. AUTHORIZATION.**

18          There are authorized to be appropriated for fiscal  
 19          year 2007, \$22,260,000 for the operation of the Defense  
 20          Nuclear Facilities Safety Board under chapter 21 of the  
 21          Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

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